IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2024

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No. 13693 of 2023
and WMP Nos.13365 & 13377 of 2023
and
W.P.No. 13709 of 2023
and WMP Nos.13379 & 13380 of 2023

Tvl.LG Electronics India Private Limited.,
Represented by its Authorised Signatory
Mr. B.Narendran, Plot No. 31A Ambit Park Road,
Ambattur Industrial Estate, South Ambattur,
Chennai - 600 058. ... Petitioner in both the petitions

Vs.

Deputy Commissioner (ST-1)
Large Tax Payers Unit,
Integrated Commercial Taxes Building,
South Tower, Nandanam,
Chennai – 600 035. ... Respondent in both the petitions

PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order in (i) GSTIN/33AAACL1745Q1ZB/2018-2019 (ii)GSTIN/33AAACL1745Q1ZB/2019-2020 respectively dated 22.02.2023 issued by the respondent and to quash the same.

For Petitioner : Ms.R.Charulatha
(in both the petitions) for M/s.Lakshmi Kumaran and Sridharan Attorneys

For Respondent : Mr.V.Prashanth Kiran
(in both the petitions) Government Advocate

COMMON ORDER

Challenge in these Writ Petitions is to the impugned orders dated 22.02.2023 passed by the respondent.

2. The learned counsel would submit that pursuant to two show cause notice, the petitioner filed a reply on 30.01.2023 and 02.02.2023 for the assessment years 2018-2019 and 2019-2020.-20 on 22.02.2023. Show cause notice order dated 27.12.2022 and while the show cause notice filed stated that personal hearing will be on 23.01.2023 as stated above. The learned counsel for the petitioner submit that when they appeared for the personal hearing on 23.01.2023, they asked time for filing reply and for the personal hearing by virtue of letter dated 23.01.2023. But, however, in the minutes it was recorded, no time was provided but only permission was granted to furnish details on or before 31.01.2023. Thereafter, the reply was filed on

30.01.2023 and 02.02.2023 for the respective assessment years.

3. After filing the reply, the respondent is supposed to provide the opportunity of personal hearing. Despite such request made by the petitioner, no such opportunity is provided. In terms of Section 75(4), it is mandatory for the respondent that when the respondent is intend to pass orders by confirming the demand issued as per the show cause notice, Therefore, he would submit that without providing personal hearing, if any order is passed, is in violation of law and principles of natural justice. Hence, he would submit that the present order is liable to be set aside.

4. The learned counsel for the respondent would submit that in the present case after filing the present Writ Petition, further appeal was filed, where 10% disputed tax amount also deposited. Therefore, the petitioner can very well avail his remedy by way of an appeal in spite of filing this present Writ Petition. Thus, he prayed for dismissal of this Writ Petition.

5. In the present case, there were two show cause notices, one dated

27.12.2022 & another one dated 28.12.2022 wherein, it was requested the petitioner to file a reply and appear for the personal hearing on 23.01.2023. The petitioner appeared for personal hearing and seeks time for filing reply. However in the minutes, it was recorded that the petitioner shall furnish the details on or before 31.01.2023. The petitioners specifically sent a letter on 23.01.2023 requesting for 15 days time for filing a reply and requested for personal hearing. Thereafter, the petitioner filed a reply on 30.01.2023 and 02.02.2023 for the respective assessment orders.

6. However, the impugned order came to be passed on 22.02.2023 without providing opportunity of personal hearing. As per Section 75(4) of the GST Act, it is mandatory to the respondent to provided the personal hearing opportunity when they intend to confirm the demand against the assessee. It is clear that the said statutory provision has not been followed and opportunity of personal hearing also not provided as requested by the petitioner. Therefore, the impugned order was passed in violation of principles of natural justice, thus, the same is liable to be set aside.

7. However, a statement was made by the respondent stating that the

petitioner has failed to avail the alternative remedy. Since the Writ Petition was filed even before filing the appeal and the appeal was filed only for the purpose as a protective appeal otherwise, it is barred by limitation. When this Court come to the conclusion that there is a violation of principles of natural justice, this Court feel that the impugned orders are liable to be set aside.

8. Since this Court has categorically comes to the conclusion that the impugned order is in violation of principles of natural justice and Section 75(4), there is no bar for this Court to set aside same. Thus, the impugned order are set aside and the grounds raised in the appeal filed by the petitioner will become infructuous. However, the amount deposited in the appeal would continue, since this Court is inclined to set aside the impugned orders and remand the matter back for reconsideration. Accordingly, this Court passed the following order:-

(i) the impugned orders are set aside and remand the matter back for reconsideration.

(ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks thereafter.

(iii) On filing of such reply/objection by the petitioner, the respondent shall consider the same and issue a 14 days clear notice by fixing the date of personal hearing to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

(iv)The amount of pre-deposit shall continue.

9. Accordingly, these writ petitions are allowed. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

04.09.2024

kkn

Index : Yes/No
Speaking order:Yes/No
Neutral Citation:Yes/No

To

Deputy Commissioner (ST-1)
Large Tax Payers Unit,
Integrated Commercial Taxes Building,
South Tower, Nandanam,
Chennai – 600035.

KRISHNAN RAMASAMY, J.

KKN

W.P.No. 13693 of 2023
and WMP Nos.13365 & 13377 of 2023
and
W.P.No. 13709 of 2023
and WMP Nos.13379 & 13380 of 2023

04.09.2024